

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

RED BARN MOTORS, INC., PLATINUM)	
MOTORS, INC., and MATTINGLY AUTO)	
SALES, INC.,)	
)	
Plaintiffs,)	
)	CASE NO. 1:14-cv-01589-TWP-DLP
vs.)	
)	
NEXTGEAR CAPITAL, INC., f/k/a/ DEALER)	
SERVICES CORPORATION,)	
)	
Defendant.)	

MOTION FOR LEAVE TO FILE PROPOSED ORDER AND REASONS

Now into Court, through undersigned counsel, come Plaintiffs, Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc., who respectfully request leave of Court to file the attached proposed Order and Reasons denying the Motion to Decertify Class (Dkt. 295) (the “Motion to Decertify”) filed by Defendant NextGear Capital, Inc. (“NextGear”).

On May 1, 2019, NextGear filed its Motion to Decertify. NextGear attached to that motion a number of exhibits (Dkt. 295-2, -3, -4, and -5), which Plaintiffs have moved to strike from the record (Dkt. 299). NextGear did not attach to the Motion to Decertify a proposed order or proposed findings of fact or conclusions of law. Further, the Court’s local rules do not provide for the submission of a proposed order relating to a non-routine motion. *See* L.R. 7-1. Nonetheless, when NextGear filed its *reply* memorandum in support of the Motion to Decertify (Dkt. 300), without seeking leave of Court, NextGear attached a detailed, 23-page proposed order on the Motion to Decertify, including detailed proposed findings of fact and conclusions of law. *See* Dkt. 300-1.

Because the proposed order was filed with NextGear’s reply memorandum rather than with the Motion to Decertify, Plaintiffs were deprived of an opportunity to respond to the issues raised therein in their opposition memorandum (Dkt. 298). Accordingly, Plaintiffs now seek leave to

submit their own proposed order and reasons, attached hereto as Exhibit A, denying the Motion to Decertify. While NextGear's proposed order is not properly before the Court, to the extent it is considered, Plaintiffs respectfully submit that their competing proposed order and reasons would assist the Court in its consideration of the Motion to Decertify.

Accordingly, Plaintiffs respectfully request that this Court grant their Motion for Leave to File Proposed Order and Reasons.

Dated: June 6, 2019.

Respectfully submitted,

/s/ Kerry A. Murphy

CATHERINE E. LASKY (La. Bar No. 28652)

Pro Hac Vice

KERRY A. MURPHY (La. Bar No. 31382)

Pro Hac Vice

LASKY MURPHY LLC

715 Girod Street, Suite 250

New Orleans, Louisiana 70130

Telephone: (504) 603-1500

Facsimile: (504) 603-1503

klasky@laskymurphy.com

kmurphy@laskymurphy.com

GLADSTONE N. JONES, III (La. Bar No. 22221) *Pro Hac Vice*

LYNN E. SWANSON (La. Bar No. 22650)

Pro Hac Vice

**JONES, SWANSON, HUDDALL &
GARRISON, L.L.C.**

601 Poydras Street, Suite 2655

New Orleans, Louisiana 70130

Telephone: (504) 523-2500

Facsimile: (504) 523-2508

gjones@jonesswanson.com

lswanson@jonesswanson.com

CASSIE E. FELDER (La. Bar No. 27805)

Pro Hac Vice

THE CASSIE FELDER LAW FIRM

7515 Jefferson Hwy., #313

Baton Rouge, LA 70806

Main: (504) 232-1733

Cell: (504) 400-1127

cassie@cassiefelderlaw.com

JAMES M. GARNER (La. Bar No. 19589)

Pro Hac Vice

RYAN D. ADAMS (La. Bar No. 27931)

Pro Hac Vice

MATTHEW M. COMAN

(La. Bar No. 23613)

Pro Hac Vice

SHER GARNER CAHILL RICHTER

KLEIN & HILBERT, L.L.C.

909 Poydras Street, Suite 2800

New Orleans, Louisiana 70112

Telephone: (504) 299-2100

Facsimile: (504) 299-2300

jgarner@shergarner.com

radams@shergarner.com

mcoman@shergarner.com

Kathleen A. DeLaney (# 18604-49)

DELANEY & DELANEY LLC

3646 North Washington Blvd.

Indianapolis, IN 46205

Telephone: (317) 920-0400

Facsimile: (317) 920-0404

Kathleen@delaneylaw.net

**COUNSEL FOR PLAINTIFFS AND
THE CLASS**

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June 2019, a copy of the foregoing was filed electronically. Notice of the filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

David J. Jurkiewicz
Paul D. Vink
BOSE MCKINNEY & EVANS, LLP
111 Monument Circle
Suite 2700
Indianapolis, IN 46204

Jason S. McCarter
Tracey K. Ledbetter
EVERSHEDS SUTHERLAND (US) LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, GA 30309-3996

/s/ Kerry A. Murphy
Kerry A. Murphy